

PAYMENTS TO NON-EMPLOYEE NONRESIDENT ALIENS
December 2008
Policy 6.1.06

Policy:

Payments issued to nonresident alien individuals with funds held by University of Kansas Medical Center Research Institute may be subject to federal and state income tax withholding per State of Kansas and Internal Revenue Service regulations.

Purpose:

The University of Kansas Medical Center Research Institute (KUMCRI) adheres to the regulations pursuant to Section 1441 of the Internal Revenue Code which states that a withholding agent is required to withhold federal income tax from all payments made to or on the behalf of a nonresident alien, and all such payments are to be reported to the Internal Revenue Service.

As of the 2008 calendar tax year, the State of Kansas required withholding on all payments to nonresident alien individuals which are subject to federal withholding.

KUMCRI also adheres to the guidelines and regulations set forth by US Citizenship and Immigration Services when issuing payment to a nonresident alien individual.

This policy encompasses payments that are processed through the KUMCRI accounts payable system. This includes independent personal services such as speakers, presenters, collaborators, lecturers and other guests of the university who share their expertise for a limited period of time, and non-service payments such as scholarships and fellowships, royalties, prizes or awards.

Procedures:

Compensating nonresident aliens can be a confusing process due to the guidelines in place depending upon an individual's immigration status and tax situation. Therefore, a "Procedures" page has been created to assist departments in the preparation of processing payments to nonresident alien individuals. The Procedures are intended to address issues and give guidance on how to proceed with obtaining the necessary documentation in order to comply with reporting requirements.

NB: Assume that every payment to a nonresident alien is subject to tax withholding until proven otherwise.

This policy is not and should not be used as formal tax or legal advice.

Definitions:

Nonresident Alien (Foreign National): A nonresident alien is an individual who is neither a U.S. citizen nor a resident alien; a resident of a foreign country under the residence article of an income tax treaty is a nonresident alien individual for purposes of withholding.

Resident Alien: Any person not a citizen of the United States who is residing in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as "Permanent Resident Alien," "Resident Alien Permit Holder," and "Green Card Holder."

Withholding Agent: A withholding agent is a U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding. A withholding agent may be an individual, corporation, partnership, trust, association, nominee (under section 1446 of the Code), or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. You may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has withheld the required amount from the payment.

Responsible Parties:

Departments and individuals involved in the process of compensating nonresident alien individuals with KUMCRI funds.

KUMCRI and University of Kansas Medical Center faculty and staff shall adhere to federal guidelines regarding Foreign Nationals.

Exemptions:

Tax treaties exist between the United States and some foreign governments that, with the completion of appropriate forms and documentation, waive the withholding requirement or a portion thereof.

Tax is not withheld on foreign-sourced income.

Related Policies and Links:

Internal Revenue Code 1441

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6fff7bde0158047bcddd0c04099dc6ba&rgn=div8&view=text&node=26:12.0.1.1.1.0.2.46&idno=26>
IRS Form 8233, Exception from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual <http://www.irs.gov/pub/irs-pdf/f8233.pdf>

IRS Form W-7, Application for IRS Individual Taxpayer Identification Number <http://www.irs.gov/pub/irs-pdf/fw7.pdf>

IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
<http://www.irs.gov/pub/irs-pdf/fw8ben.pdf>

IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
<http://www.irs.gov/publications/p515/index.html>

KU Legal Services for Students, <http://www.legalservices.ku.edu/>

KUMC Office of International Programs <http://www.kumc.edu/international/>

KUMC Research Institute Contractual Services Form

http://www2.kumc.edu/researchinstitute/spa/SPA_Forms/Contractual%20Service%20Form.doc

KUMC Research Institute Nonresident Alien Summary Form

KUMC Research Institute Procedure 6.a.06: Procedures

KUMC Research Institute Procedure 6.b.06: Visa Types

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